

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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JAMES MURRAY

Plaintiff,

vs

9:04-cv-00805

C.O. Bushey

Defendant.  
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APPEARANCES:

OF COUNSEL:

JAMES MURRAY  
Plaintiff, pro se  
95-A-4417  
Upstate Correctional Facility  
P.O. Box 2001  
Malone, NY 12953

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SENTA B. SIUDA, ESQ.  
Ass't Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

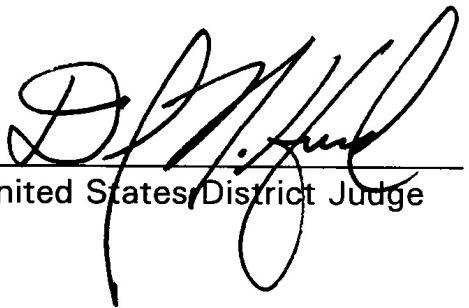
Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On February 2, 2009, the Honorable George H. Lowe, United States Magistrate Judge, advised, by Report-Recommendation, that defendant's motion for summary judgment be granted, and the complaint be dismissed in its entirety. Both parties timely filed objections to the Report-Recommendation.

Based upon a de novo determination of the portions of the report and recommendations to which both parties objected, the Report-Recommendation is accepted in whole. See 28 U.S.C. 636(b)(1). Accordingly, it is

ORDERED that

1. Defendants' motion for judgment on the pleadings (Docket. No.43) is **DENIED** as to Plaintiff's Fourth Amendment claim;
2. **GRANTED** as to Plaintiff's Eighth Amendment claim; and
3. Plaintiff's Eighth Amendment claim is DISMISSED.

IT IS SO ORDERED.

  
United States District Judge

Dated: February 23, 2009  
Utica, New York.